

APPENDIX B  
Proposed Notice of Environmental  
Covenant  
U.S. v. Jay & Kathleen Jackson, et al.

**NOTICE OF ENVIRONMENTAL COVENANT**

This Notice of Environmental Covenant is made this 27<sup>th</sup> day of July, 2006, by and between JACKSON SERVICES, INC., a Nebraska Corporation ("Grantor"), and JAY J. JACKSON and KATHLEEN JACKSON, ("Holders/Grantees"), pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. Sections 76-2601 to 76-2613 (Supp.2005) ("Act").

**RECITALS.**

A. WHEREAS, Grantor is the owner of real property located at 960 24th Avenue in the County of Platte, State of Nebraska, more particularly described as follows:

Lot Eight (8) and the East 50 feet of Lot Seven (7), in Block One Hundred Twenty-Eight (128) of the Original City of Columbus, Platte County, Nebraska.  
(the "Property"); and

B. WHEREAS, the Property is part of the 10th Street Superfund Site, which encompasses a contaminant plume, approximately 430 acres in size, currently located between about 23rd and 6th Streets from north to south and between about 17th Avenue and 32nd Avenue from east to west in Columbus, Platte County, Nebraska, and depicted more clearly on the map attached hereto as Exhibit 1, and placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B by publication at 55 Fed. Reg. 35502 Table 1 on August 30, 1990, and,

C. WHEREAS, i) the Property is subject to environmental response action, pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, ii) such response action is an "environmental response project" as defined by the Act, and iii) the United States Environmental Protection Agency is the "Agency" as defined by the Act; and

D. WHEREAS, the Regional Administrator for EPA Region VII (EPA Regional Administrator) has selected environmental response actions for the Site in a Record of Decision for Operable Unit 1 (OU1 ROD) signed on February 23, 1995, an Interim Record of Decision for OU2 (OU2 Interim ROD) signed on September 20, 2001, and the Final Record of Decision for OU2 (OU2 Final ROD) signed on September 29, 2005; and

E. WHEREAS, the administrative record for the environmental response actions reflected in this covenant is located at the Columbus Public Library in Columbus, Nebraska and the EPA Region VII Office at 901 N. Fifth Street, Kansas City, Kansas; and

F. WHEREAS, the parties hereto have agreed, i) to grant a right of access over the Property to the Holders/Grantees for purposes of implementing, facilitating and monitoring the

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SUPERFUND RECORDS

source control and ground water remedies required by the EPA right of access, which right of access shall be perpetual unless terminated pursuant to Section 72-2610, and ii) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

G. WHEREAS, Grantor wishes to cooperate fully with Holders/Grantees in the implementation of all environmental response actions required by EPA and performed at the Property;

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors, and assigns, in consideration of the performance by the Holders/Grantees of environmental response actions required by EPA, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Holders/Grantees and their successors and assigns, with general warranties of title, i) the perpetual right to enforce use restrictions set forth below, and ii) an environmental covenant of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.
2. Purpose: It is the purpose of this instrument to convey to the Holders/Grantees real property rights, which will run with the land, and to give to EPA, the Agency, the right to enforce the use restrictions, as defined in Paragraph 3 below, in order to assure that the Property will be used only for purposes which are compatible with the remedy selected in the Records of Decision and to reduce the risk of exposure to contaminants for human health and the environment.
3. Restrictions on Use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land, and are binding on the Grantor.
  - a. The Property shall not be used, developed or operated in any manner that violates any applicable state or federal laws, rules, and regulations and/or zoning requirements.
  - b. The Property shall not be used or developed in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures performed pursuant to the Records of Decision for the 10th Street Superfund Site.
  - c. The construction or installation of any new water wells on the Property (other than groundwater monitoring wells or remediation wells) shall be prohibited.
  - d. Any drilling, or similar intrusive activity which would disturb or interfere with groundwater contamination on the Property (other than installation of groundwater monitoring wells or remediation wells) shall be prohibited.

e. The Property or any portion thereof shall not be used for any use other than industrial or commercial use, excluding child care facilities, which shall be prohibited.

f. The excavation and drilling of soils located on the Property shall be prohibited without prior written approval of EPA or the Nebraska Department of Environmental Quality, except for minor excavations necessary to install, maintain or repair utility poles, fence posts, sidewalks, paving, and other comparable activities, as well as minor excavations necessary to maintain or repair existing underground utilities and minor excavations in connection with landscaping activities and any excavations shall be conducted in accordance with worker protection and soil disposal requirements as may be required by applicable laws and requirements.

g. Neither PCE or TCE or any substance containing PCE or TCE shall be used or stored on the Property at any time.

4. Abandonment of Existing Wells: Grantor shall abandon any existing water wells on the Property (other than groundwater monitoring wells) in accordance with State of Nebraska regulations.

5. Amendment and Termination of Environmental Covenant By Consent: This environmental covenant shall run with the land. This environmental covenant may be amended or terminated by consent in accordance with and subject to the provisions of Neb. Rev. Stat. Section 76-2610 (Supp.2005). The modification or termination of this environmental covenant is not effective until the document evidencing consent of all necessary persons is properly recorded.

6. Termination of Environmental Covenant: The covenant contained herein shall be deemed a covenant running with the land. This environmental covenant is perpetual unless it is terminated pursuant to Neb. Rev. Stat. Section 76-2609 or Section 76-2610 (Supp.2005).

7. Environmental Protection Easement: Grantor hereby grants to Holders/Grantees and to the Agency and its contractors and designees an irrevocable permanent and continuing right of access at all reasonable times to the Property. The purposes for such access are as follows:

- a. Conducting environmental response activities related to the Site;
- b. Monitoring of investigation, removal, remedial or other activities at the Site and verifying any data or information submitted to the United States;
- c. Obtaining samples and conducting investigations relating to contamination at or near the Site;
- d. Assessing the need for, planning, or implementing response actions at or near the Site;

e. Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations; and

f. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.

8. Reserved Rights of Grantor: Grantor hereby reserves unto itself and its successors, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

9. Rights of Entry: Nothing in this document shall limit or otherwise affect the Grantees's rights of entry and access provided by law. Nothing in this instrument shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the National Contingency Plan, or other federal law.

10. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

11. Notice Requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to, deeds, leases and mortgages, a notice which is in substantially the form set forth below. Within thirty (30) days of the date any such instrument of conveyance is executed and its recording reference in the Platte County Register of Deeds.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE EFFECT OF AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_ 2006, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF PLATTE COUNTY, NEBRASKA ON \_\_\_\_\_, 2006 AT DEED BOOK \_\_\_\_\_ AND PAGE NUMBER \_\_\_\_\_ IN FAVOR OF, AND ENFORCEABLE BY, JAY J. JACKSON, KATHLEEN JACKSON AND THEIR SUCCESSORS AND ASSIGNS AND BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

12. Enforcement: The Holders/Grantees and the Agency shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All reasonable costs and expenses of Holders/Grantees and the Agency, including, but not limited to, attorneys' fees, incurred in any such enforcement action, shall be borne by Grantor or its successors in interest to the Property. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity. Any forbearance, delay or omission by Holders/Grantees or the Agency to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by Holders/Grantees or the Agency of such term or of any subsequent breach of the same or any other term, or of any of the rights of Holders/Grantees or the Agency under this instrument.

13. Damages: Holders/Grantees and the Agency shall be entitled to recover damages for violations for any terms of this instrument, or for any injury to the remedies required by EPA, to the public or to the environment protected by this instrument.

14. Agency: The Grantor on behalf of itself and its heirs, successors, transferees, and assigns and the Holders on behalf of itself and its successors, transferees, and assigns hereby agree that the EPA shall be the Agency under this Environmental Covenant.

15. Waiver of Certain Defenses: Grantor hereby waives any defense of laches, estoppel or prescription.

16. Title Covenants: Grantor hereby covenants to and with Holders/Grantees and its successors and assigns, that Grantor is lawfully seized in fee simple of the Property, that Grantor has a good and lawful right and power to sell and convey it, that the Property is free and clear of encumbrances, and that Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

17. Notices: Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to any other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as stated below.

To Grantor:

Jackson Services, Inc.  
981 33<sup>RD</sup> Avenue  
P.O. Box 706  
Columbus, Nebraska 68602-0706

To Grantees:

Jay J. Jackson  
Kathleen Jackson  
30612 205th Avenue  
Columbus, NE 68601

To Agency:

USEPA, Region VII  
Re: 10th Street Superfund Site  
Jackson Services, Inc. (07CS OU1)  
901 North 5th St.  
Kansas City, Kansas 66101

To the Nebraska Department of Environmental Quality

Nebraska Department of Environmental Quality  
Remediation Section  
Suite 400, The Atrium  
1200 N. Street  
P.O. Box 98922  
Lincoln, NE 68509-8922

To the City of Columbus  
City Administrator  
City of Columbus  
2424 14th Street  
Columbus, NE 68602-1677

18. General Provisions:

- a. Controlling law – The interpretation and performance of this instrument shall be governed by the laws of the State of Nebraska.
- b. Liberal construction – Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of protecting human health and the environment. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any other interpretation that would render it invalid.
- c. Severability – If any provision of this instrument, or the application of it to any person or circumstance, or the application of such provisions to persons or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d. Entire Agreement – This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.
- e. No Forfeiture – Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- f. Successors – The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include JACKSON SERVICES, INC., a Nebraska Corporation, and its personal representatives, successors, and assigns. The term "Holders/Grantees", wherever used herein, and any pronouns used in place thereof, shall include Jay J. Jackson, and his personal representatives, heirs, successors, and assigns and Kathleen Jackson and her personal representatives, heirs,

successors and assigns.

g. As provided in Neb. Rev. Stat. Section 76-2610 (Supp.2005), assignment of an environmental covenant to a new Holders is an amendment. The Holders may not assign their interest without consent of the other parties.

h. Captions – The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i. Counterparts – The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

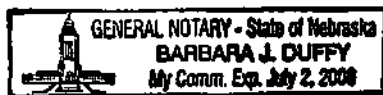
TO HAVE AND TO HOLD unto JAY J. JACKSON, his successors, heirs and assigns forever and KATHLEEN JACKSON, her successors, heirs and assigns forever.

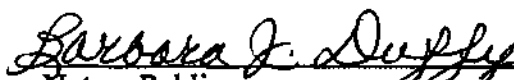
In witness whereof, Grantor has caused this Agreement to be signed in its name.  
Executed the 27<sup>th</sup> day of JULY, 2006.

  
For Jackson Services, Inc.  
a Nebraska Corporation

STATE OF )  
COUNTY OF )

The foregoing instrument was acknowledged before me on the 27<sup>th</sup> day of July, 2006 by Barbara J. Duffy



  
Notary Public

This easement is accepted this 27<sup>th</sup> day of JULY, 2006.

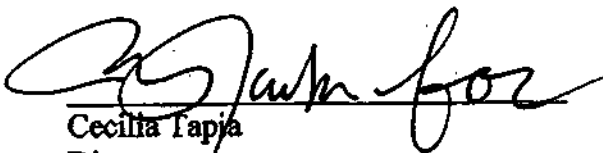
By Grantees/Holders:

  
Jay J. Jackson

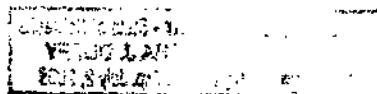
  
Kathleen Jackson

On behalf of the Agency:

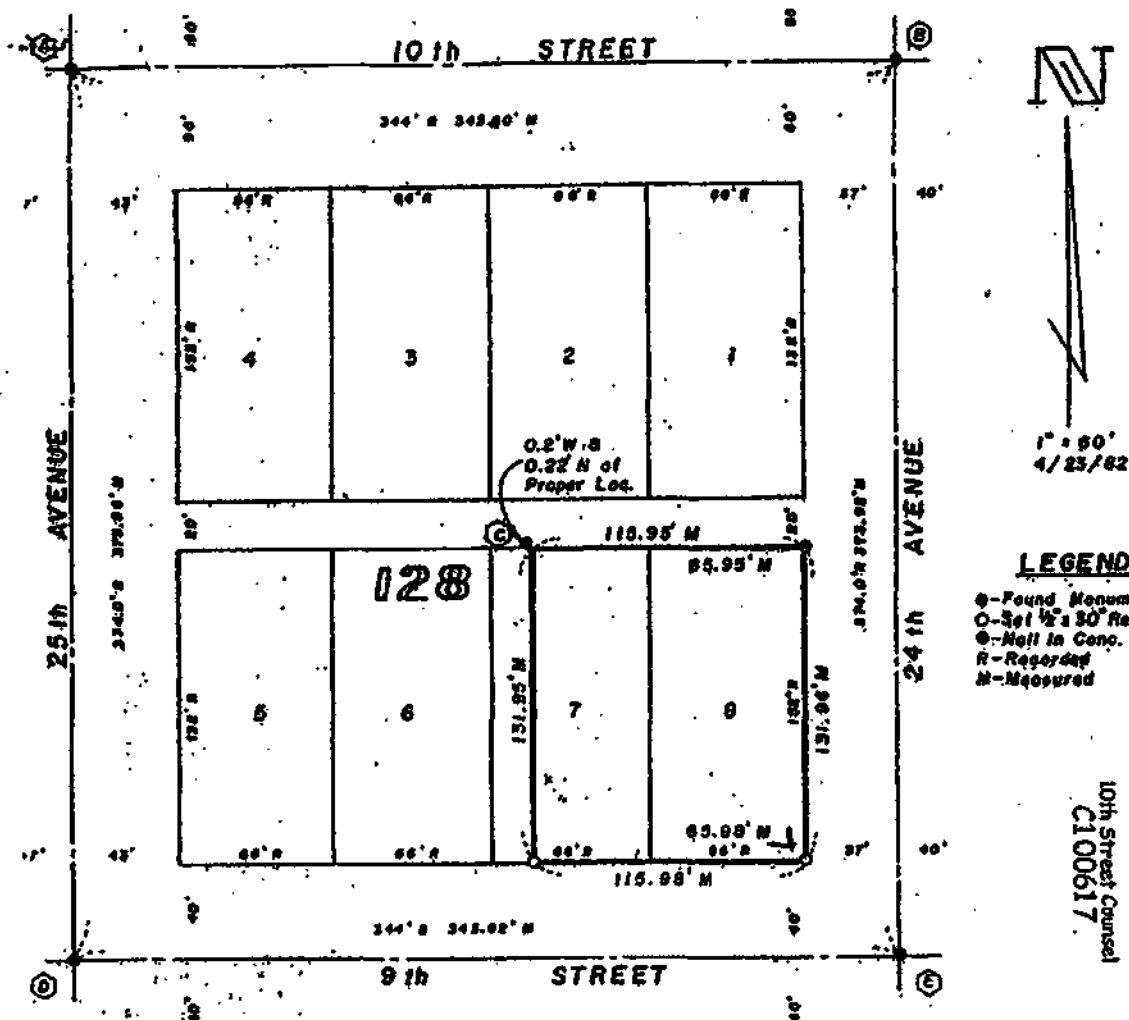
United States Environmental Protection Agency, Region VII:

A handwritten signature in black ink, appearing to read "Cecilia Tapia", written over a horizontal line.

Cecilia Tapia  
Director  
Superfund Division







#### FIELD NOTES

- At A, found 1/2" I.P., at surface of concrete street.  
 At B, found 1/2" I.B., at surface of concrete street.  
 At C, found 1" I.P., 0.5' deep. Said I.P. is not recorded and is 0.2' west of and 0.22' north of proper location.  
 At D, found monument wall.  
 At E, found 3/4" I.P., inside 4" I.P., at surface of concrete street.

#### DESCRIPTION

All of Lot 8 and the east 50 feet of Lot 7, Block 128, Original City of Columbus, Platte County, Nebraska.

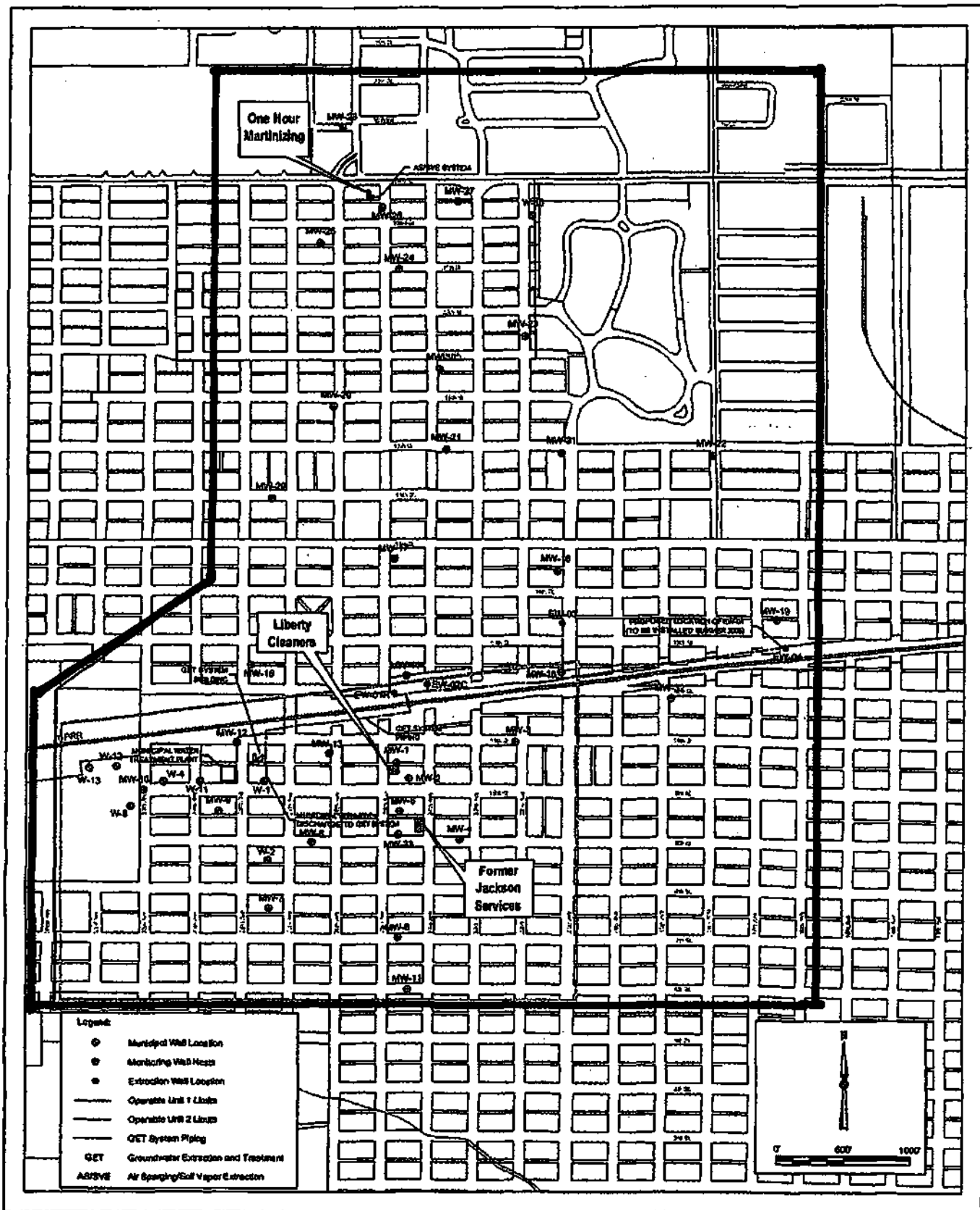
#### SURVEYOR'S CERTIFICATE

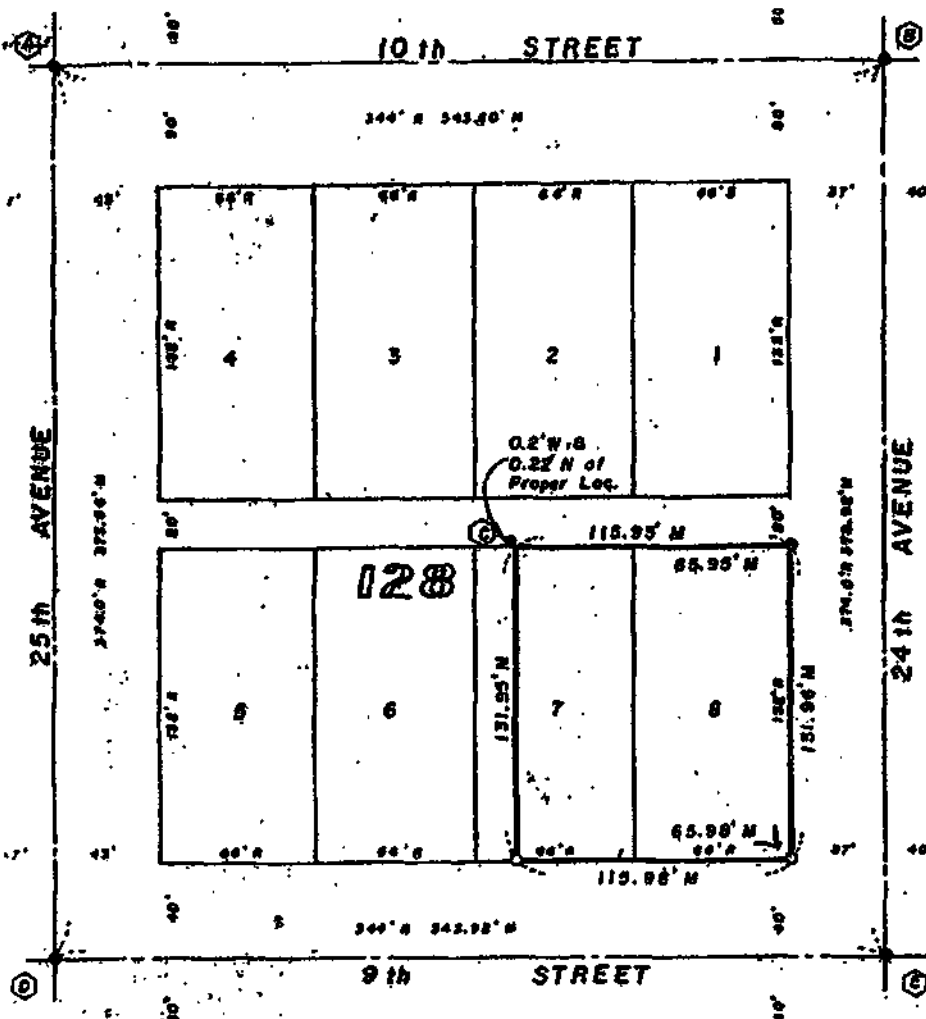
I, Richard L. Ranker, certify that I am a registered land surveyor of the State of Nebraska; that this survey was made under my direction on April 23, 1982; and that the survey is true and complete as shown, to the best of my knowledge; that all monuments set, together with those found, are of the character and occupy the positions shown thereon, and are sufficient to enable the survey to be retraced.



*Richard L. Ranker*  
 Richard L. Ranker, Nebraska L.S. No. 383

EXHIBIT 1  
 Notice of Environmental Covenant  
 Map





#### LEGEND

\* - Found Monument  
 O - Set 1/2" x 3/4" Re.  
 \* - Nail in Conc.  
 R - Recorded  
 M - Measured

#### FIELD NOTES

- At A, found 1/2" I.P., at surface of concrete street.  
 At B, found 1/2" I.B., at surface of concrete street.  
 At C, found 1" I.P., 0.5' deep. Said I.P. is not recorded and is 0.2' west of and 0.22' north of proper location.  
 At D, found monument well.  
 At E, found 3/4" I.P., inside 4" I.P., at surface of concrete street.

#### DESCRIPTION

All of Lot 8 and the east 50 feet of Lot 7, Block 128, Original City of Columbus, Platte County, Nebraska.

#### SURVEYOR'S CERTIFICATE

I, Richard L. Ronkar, certify that I am a registered land surveyor of the State of Nebraska; that this survey was made under my direction on April 23, 1982; and that the survey is true and complete as shown, to the best of my knowledge; that all monuments set, together with those found, are of the character and occupy the positions shown thereon, and are sufficient to enable the survey to be retraced.



*Richard L. Ronkar*  
 Richard L. Ronkar, Nebraska L.S., No. 383

APPENDIX A- "Property"  
U.S. v. Jay & Kathleen Jackson, et al.